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SENATE BILL 590

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO HEALTH; ENACTING THE EMPLOYEE ABUSE REGISTRY ACT;
ESTABLISHING A REGISTRY OF PROVIDER EMPLOYEES WITH
SUBSTANTIATED ABUSE, NEGLECT OR EXPLOITATION CHARGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Employee Abuse Registry Act".

Section 2. DEFINITIONS.--As used in the Employee Abuse
Registry Act:

A. "abuse" means:

(1) knowingly, intentionally or negligently
and without justifiable cause inflicting physical pain, injury
or mental anguish; or

(2) the intentional deprivation by a caretaker
or other person of services necessary to maintain the mental

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1 and physical health of an adult;

2 B. "department" means the department of health;

3 C. "direct care" means face-to-face services
4 provided or routine and unsupervised physical or financial
5 access to a recipient of services;

6 D. "employee" means a person employed or contracted
7 to provide direct care services or a prospective employee or
8 contractor providing direct care services to persons who are
9 developmentally disabled, physically disabled or elderly,
10 including a personal care attendant funded through the medicaid
11 program. "Employee" does not include a New Mexico licensed
12 health care professional practicing within the scope of the
13 profession's license or a certified nurse aide;

14 E. "exploitation" means an unjust or improper use
15 of an adult's money or property for another person's profit or
16 advantage, pecuniary or otherwise;

17 F. "misconduct" means the substantiation of abuse,
18 neglect or exploitation by an employee;

19 G. "neglect" means failure of the caretaker of an
20 adult to provide basic needs such as clothing, food, shelter,
21 supervision and care for the physical and mental health of that
22 adult or failure by an adult to provide such basic needs for
23 himself;

24 H. "provider" means a licensed health facility as
25 defined in Subsection D of Section 24-1-2 NMSA 1978, an agency

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1 or organization that delivers home and community-based services
2 to adults or children with developmental disabilities,
3 including an intermediate care facility for the mentally
4 retarded, or an agency that delivers services to the physically
5 disabled, including personal care attendants funded through the
6 medicaid program. "Provider" does not include managed care
7 organizations, except for their employees who provide respite
8 care to persons who are developmentally disabled, physically
9 disabled or elderly;

10 I. "registry" means an electronic database that
11 provides information on substantiated employee abuse, neglect
12 or exploitation; and

13 J. "secretary" means the secretary of health.

14 Section 3. REVIEW OF REPORT OF ABUSE, NEGLECT OR
15 EXPLOITATION. --

16 A. In addition to other actions required by law,
17 the department shall review each report it receives of abuse,
18 neglect or exploitation of persons who are developmentally
19 disabled, physically disabled or elderly receiving services
20 from providers who contract with the department or are licensed
21 or certified by the department.

22 B. The department shall determine whether there is
23 credible information of abuse, neglect or exploitation in the
24 report to warrant an investigation.

25 C. If there is credible information of abuse,

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1 neglect or exploitation in the report, the department shall
2 investigate the allegation and make a determination as to
3 whether abuse, neglect or exploitation has been substantiated.

4 Section 4. EMPLOYEE ABUSE REGISTRY. --

5 A. The department shall establish an "employee
6 abuse registry" and enter names into the registry of employees
7 with substantiated abuse, neglect or exploitation charges as
8 determined by the department pursuant to the Employee Abuse
9 Registry Act.

10 B. The department shall also enter names into the
11 registry of employees with substantiated abuse, neglect or
12 exploitation charges as determined by the adult protective
13 services division of the aging and long-term services
14 department pursuant to the Adult Protective Services Act.

15 C. Before a provider hires or contracts with an
16 employee, the provider shall inquire of the department's
17 registry as to whether the employee is included in the
18 registry.

19 D. When the department's registry receives an
20 inquiry, it shall provide information as to whether an employee
21 is included in the registry.

22 E. Providers shall maintain documentation
23 demonstrating that they have accessed and reviewed the registry
24 for each applicant being considered for employment or contract.

25 F. A provider shall not hire or contract with an

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1 employee in a direct care or other setting that allows for
2 routine and unsupervised physical or financial access to
3 persons who are developmentally disabled, physically disabled
4 or elderly if the employee is included in the registry.

5 G. The department or other state agency funding a
6 provider may at its discretion decline to enter into or renew a
7 contract with a provider that fails to comply with the
8 provisions of the Employee Abuse Registry Act.

9 H. A provider that reports allegations of abuse,
10 neglect or exploitation or that fails to hire an employee
11 because the employee is included in the registry is presumed to
12 be acting in good faith and shall be immune from liability as
13 to that employee for both civil and criminal culpability. If,
14 however, the provider acted in bad faith or with malicious
15 purpose, the provider is not immune from liability as to that
16 employee.

17 I. After a period of three years, an employee
18 placed on the registry may petition the department for removal
19 of the employee's name from the registry. Petitions for
20 removal shall be in writing and mailed or hand-delivered to the
21 department. Upon receipt of a petition, the department shall
22 conduct an administrative hearing. Persons who are on the
23 registry and have been convicted of felony abuse, neglect or
24 exploitation shall not be removed from the registry.

25 Section 5. ADMINISTRATIVE HEARINGS. --

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1 A. The department shall adopt rules for
2 administrative due process hearings for employees proposed for
3 inclusion on the employee abuse registry. The hearings shall
4 be conducted in Santa Fe, unless the department agrees to
5 another location for the convenience of the parties and
6 witnesses. The employee has the right to be represented by
7 counsel, to present evidence and witnesses and to examine any
8 opposing witness. The hearing officer has the power to
9 administer oaths, and on the request of any party, to issue
10 subpoenas and subpoenas duces tecum prior to or after the
11 commencement of the hearing to compel discovery and the
12 attendance of witnesses. An employee aggrieved by the final
13 decision of the department following an administrative hearing
14 shall have the right to review pursuant to the provisions of
15 Section 39-3-1.1 NMSA 1978.

16 B. The department's administrative hearing process
17 is available to employees of providers who contract with the
18 department or providers or facilities that are licensed or
19 certified by the department.

20 Section 6. ADULT PROTECTIVE SERVICES DIVISION DUTY TO
21 REPORT. --

22 A. The adult protective services division of the
23 aging and long-term services department shall investigate
24 allegations of abuse, neglect and exploitation consistent with
25 its responsibilities in the Adult Protective Services Act.

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1 B. The adult protective services division shall
2 communicate to the department of health substantiation of
3 abuse, neglect or exploitation of employees of providers
4 defined in the Employee Abuse Registry Act.

5 C. The department of health shall place on the
6 registry the name of an employee with substantiated abuse,
7 neglect or exploitation charges as determined by the adult
8 protective services division.

9 D. The adult protective services division shall
10 adopt rules providing an administrative due process hearing for
11 employees found to have committed abuse, neglect or
12 exploitation as determined by the division upon investigation
13 and for whom notice is provided of the employee's proposed
14 inclusion in the registry. The division's administrative due
15 process hearing shall be substantially similar to the
16 administrative hearing provided by the department of health.
17 An employee aggrieved by the final decision following an
18 administrative hearing shall have the right to judicial review
19 pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

20 Section 7. ADOPTION OF RULES. --By January 1, 2007, the
21 department shall adopt rules necessary to carry out the
22 provisions of the Employee Abuse Registry Act, including
23 procedures for determining abuse, neglect and exploitation,
24 procedures for reporting, for the administrative hearing
25 process and for sanctions for failure to comply with the

1 Employee Abuse Registry Act.

2 Section 8. PENALTIES. --The department shall administer
3 sanctions for provider failure to comply with the Employee
4 Abuse Registry Act, including a directed plan of correction or
5 civil monetary penalty not to exceed ten thousand dollars
6 (\$10,000) per instance.

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